From: Michael McLay
To: Microsoft ATR
Date: 1/28/02 1:05pm
Subject: Microsoft Settlement

The comments on the Microsoft Settlement by Dan Kegel [1] highlight many reasons for handing down a swift and harsh punishment for Microsoft. There should be no negociating this settlement. They are at the mercy of the court and should suffer the consequences of their actions. The following suggestion on the nature of the punishment has not been proposed in any discussions I have seen to date.

I am concerned that the settlement talks with Microsoft have ignored the assignment of a financial penalty. Antitrust law allows for treble damages so the court has ample power to punish violators. An effective settlement must include a stiff financial penalty that is proportionate to the profits that Microsoft gained through their violations of the law. The abuse of monopoly power has resulted in many billions of dollars in windfall profits to the company. A fine of \$20-30 billion would send a message that Microsoft will understand. It isn't excessive (it would be less than a year's profits) and wouldn't do excessive harm to the company's financial health (they have the cash to pay the fine immediately). Anything less will be a simple slap on the hands which they will ignore.

Awarding this money directly to those who where damaged by the abuses of Microsoft is not practical. Not everyone registers the purchase of the products involved and even if the fine were distributed the resulting award would only be a few dollars per person. A straight distribution of the fine would have no lasting outcome.

The judgement could leverage the fine against Microsoft to strengthen the punishment and benefit those who were harmed. This can be done by using the money to set up a foundation to fund open source software projects. This would result in a just solution that helps those who were damaged directly by Microsoft. Open source software is freely available to everyone, so everyone benefits equally. Open source software is also the one potential "competitor" that Microsoft still fears. A \$20B trust fund that assigns matching grants to those who are willing to work for the public good would benefit everyone equally and potentially help restore competition to the software world.

There are many open source organizations set up to help fund open source developers. Organizations such as the Free Software Foundation [2] and the Python Software Foundations [3] would be able to make significant progress in projects that otherwise only make progress through the voluntary efforts of motivated and highly skilled software developers. Imagine the good that would be had by funding 20 such organizations with a \$1B trust fund.

This remedy will do much to help restore the market balance, but it will not be sufficient if Microsoft continues to control the definition of standards.

The punishment must also require Microsoft to participate in the development and use of open and well documented standards. The Kerberose abuse is evidence of their intentions to subvert competition. The punishment must prevent them from further harming the market though the abuse of standards and secret interface definitions.

- [1] http://www.kegel.com/remedy/
- [2] http://www.fsf.org/
- [3] http://www.python.org/psf/